UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,
Plaintiff,

v.

JOSE MULERO-VARGAS,
Defendant.

CRIMINAL NO. 3:17-mj-00904-BJM-1
17-297-FAB

UNITED STATES OF AMERICA'S EMERGENCY MOTION REQUESTING A STAY OF MAGISTRATE JUDGE'S RELEASE ORDER AND DE NOVO HEARING

The United States of America, through its undersigned counsel, respectfully requests that this Court, having original jurisdiction over the offenses charged in the Indictment (violations of 18 U.S.C. § 924(c) (machine gun) and 21 U.S.C. § 841(a)(1) (cocaine)), review the release order entered by the Magistrate Judge on May 10, 2017 (Dkt. No. 12) and revoke this release after a *de novo* bail hearing in order to reasonably assure the safety of the community as provided by 18 U.S.C. § 3142.

The United States also requests that this Court stay the release order pending disposition of this motion. Such a stay will preserve this Court's jurisdiction and protect the integrity of the judicial process, in accordance with 28 U.S.C. § 1651(a), while any incremental harm to Defendant will be minimized by a prompt determination of the United States' motion for review in accordance with 18 U.S.C. § 3145(a).

In this case, the defendant was found in a one-bedroom residence where he had lived for four years with a machinegun, five other guns, over 1,600 rounds of ammunition, 49 magazines of different calibers (including numerous high-capacity magazines), and approximately 260 bags of a white powdery substance that is believed to be cocaine. He has been charged by a federal grand jury with violations of 18 U.S.C. § 924(c) (machine gun) and 21 U.S.C. § 841(a)(1) (cocaine). No conditions can be reasonably crafted that would ensure the community's safety.

Factual Background[1]

On May 3, 2017 around 6:30 PM, PRPD agents executed a local search warrant for a one-bedroom residence located at carr. 867 km. 5.5 Bo. Ingenio in Toa Baja, Puerto Rico, which was known to be occupied by Jose Mulero-Vargas.

Upon entering the residence, PRPD agents performed a protective sweep and encountered Luis Merced-Garcia inside of the living room of the residence and Mulero-Vargas inside of the bedroom. Upon being questioned after being *Mirandized*, Mulero-Vargas stated that he had been living in the residence for approximately four years.

Inside of the bedroom where Mulero-Vargas was arrested, agents seized the following items from multiple bags and suitcases:

- One Glock pistol (model 23, caliber .23) which had been modified to be a machinegun and that was loaded with ammunition
- One Keltec pistol (model PLL16, caliber: 5.56) loaded with ammunition

1 The facts stated herein are largely based the facts set forth in the affidavit filed in support of the criminal complaint at 3:17-mj-00904-BJM. (*See* Docket Entry No. 1-1.)

- One Glock pistol (model: 35, caliber .40), loaded with ammunition
- One Kimar pistol stunt gun (which fires blank rounds) (model: 92, caliber .8mm)

Inside of the bathroom near the bedroom, the agents seized the following from the closet:

- One Frontier revolver (model Derringer)
- One Titan pistol (caliber 2)
- One Glock pistol (model: 38, caliber .45)
- Multiple boxes of assorted ammunition
- Four digital scales
- A firearm cleaning kit

Inside of the living room, the agents seized the following items from a stand located in front of the television:

- 166 small blue zip lock baggies containing a white powdery substance
- 100 small orange zip lock baggies containing white powdery substance
- One plastic zip lock bag containing a white powdery substance that field tested positive for cocaine
- 154 white prescription pills inside an orange plastic container with white cap
- Two white prescription pills inside a blue container with white cap
- Two black pills inside blue container with white cap
- Two containers with white cap containing a green leafy substance
- Three white containers containing a white powdery substance
- Two digital scales

- $612 in cash
- A drug ledger

Items found throughout the rest of the living room and bedroom area:

- 295 rounds of .45 caliber ammunition
- 328 rounds of .40 caliber ammunition
- 96 rounds of 9mm ammunition
- 448 rounds of 7.62 caliber ammunition
- 445 rounds of .223 caliber ammunition
- 2 rounds of .38 caliber ammunition
- 2 rounds of .357 caliber bullets
- 49 assorted magazines of different caliber ammunition—several of which were high-capacity magazines

PRPD agents obtained written consent to search the vehicle of Merced-Garcia, where they discovered a Glock Pistol Model:23, .40 Caliber that had been modified to function automatically as a machinegun.

PRPD agents stated they did not interview the subjects but stated that Merced-Garcia, of his own volition, took ownership of all of the illegal items that were found inside of the vehicle and the residence.

Relevant Procedural Background

At the initial appearance of Merced-Garcia on May 8, the magistrate judge released the defendant on $10,000 unsecured bond. (Dkt. No. 7) No home arrest or electronic monitoring were imposed. *Id.*

On May 10, a detention/bail hearing was held for Mulero-Vargas, during which the magistrate judge concluded that Mulero-Vargas was not a danger to the community and should be released on $10,000 bail ($8,000 of which was unsecured) with home detention and electronic monitoring. (Dkt. No. 12)

Later on May 10, a federal grand jury returned a three-count indictment against Mulero-Vargas and Merced-Garcia for violations of 18 U.S.C. § 924(c) (two machine guns), 18 U.S.C. § 924(c) (five other guns), and 18 U.S.C. § 841 (cocaine). That case number is 17-297-FAB.

Argument

In light of: (1) the firearms (including a machine gun) that were located in the house (including the bedroom in which defendant was arrested); (2) over 1,600 rounds of ammunition; (3) 49 magazines (including a large number of high-capacity magazines), and (4) the large quantity of drugs, the United States respectfully submits that there is no condition or set of conditions that could reasonably assure the safety of the community.

Photos of the evidence recovered from the search are attached to this motion.

Accordingly, for the reasons set forth above, the United States respectfully requests that the District Court **STAY** the Magistrate Judge's Order granting Defendant bail, and that a de novo bail hearing be scheduled in order for the United States to request a review of the Order granting release to Defendant pursuant this Court's inherent power to supervise the actions of a United States Magistrate Judge. *See* 28 U.S.C. § 636.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 10th day of May 2017,

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants.

s/ Jonathan Gottfried
Jonathan Gottfried
Assistant United States Attorney